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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/931,912	08/20/2001	Nghi Van Nguyen	05725.0593-00	4343
22852	7590	12/05/2005	EXAMINER	
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			ELHILO, EISA B	
		ART UNIT	PAPER NUMBER	
		1751		

DATE MAILED: 12/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/931,912	NGUYEN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Eisa B. Elhilo	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 07 September 2005.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-19 and 21-131 is/are pending in the application.
- 4a) Of the above claim(s) 43-131 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-19 and 21-42 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/26/2003 &amp; 9/7/05</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

**DETAILED ACTION**

- 1 This action is responsive to the remarks filed on September 7, 2005.
- 2 Claims 1-5, 7-11, 18-19, 21, 25-26, 29, 32-34 and 37-41 stand rejected under 35 U.S.C. 102 (b) as being anticipated by Helioff et al. (US 4,793,994) for the reasons set forth in the previous office action mailed on March 8, 2005.
- 3 Claims 6, 22-23, 36 and 42 stand rejected under 35 U.S.C. 103 (a) as being unpatentable over Helioff et al. (US 4,793,994) for the reasons set forth in the previous office action mailed on March 8, 2005.
- 4 Claims 12-17, 27 and 30-31 stand rejected under 35 U.S.C. 103 (a) as being unpatentable over Helioff et al. (US 4,793,994) in view of Au et al. (US 5, 872,111) for the reasons set forth in the previous office action mailed on March 8, 2005.
- 5 Claims 24 and 35 stand rejected under 35 U.S.C. 103 (a) as being unpatentable over Helioff et al. (US 4,793,994) in view of Mathews et al. (US 4,816,246) for the reasons set forth in the previous office action mailed on March 8, 2005.
- 6 Claim 28 stands rejected under 35 U.S.C. 103 (a) as being unpatentable over Helioff et al. (US 4,793,994) in view of Pyles et al. (US 2001/0008630 A1) for the reasons set forth in the previous office action mailed on March 8, 2005.
- 7 Claims 43-131 are withdrawn from consideration for the reasons set forth in the previous office action mailed on 7/22/2003.

***Response to Applicant's Arguments***

- 8 Applicant's arguments filed 9/7/2005 have been fully considered but they are not persuasive.

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With respect to the rejection of claims 1-5, 7-11, 18-19, 21, 25-26, 29, 32-34 and 37-41 under 35 U.S.C. 102 (b) as being anticipated by Helioff et al. (US' 994), Applicant argues that Helioff does not anticipate the present claims at least because it does not disclose at least one reducing agent chosen from thiols, sulfites and derivatives thereof and at least one complexing agent effective for dissociating the at least one hydroxide compound in a sufficient quantity to effect lanthionization of keratinous fibers, wherein at least one hydroxide compound and at least one reducing agent are present in a combined amount effective to relax keratinous fibers.

The examiner respectfully disagrees with the above arguments because a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegeaal Bros. v. Union Oil Co. of California*, 824 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Further, when a claim covers several structures or compositions, either generically or as alternatives, the claim is deemed anticipated if any of the structures or compositions within the scope of the claims is known in the prior art." *Brown v. 3M*, 265 F.3d 1349, 1351, 60 USPQ2d 1375, 1376 (Fed. Cir. 2001).

In this case Helioff et al. (US' 994) teaches a composition comprising hydroxide compounds include ammonium hydroxide and potassium hydroxide, reducing agents of ammonium bisulfite ( $\text{NH}_4\text{HSO}_3$ ) and sodium bisulfite ( $\text{NaHSO}_3$ ) as sulfite derivatives and chelating agent (complexing agent) wherein these ingredients are presented in the claimed amounts (see col. 5, the Table). Therefore, the disclosure of Helioff et al. (US' 994) teaches a composition having the limitations of the claimed invention and is capable of performing the lanthionization of keratinous fibers.

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Further, based on the disclosure of Schoon (1993), Applicant argues that the permanent waving formulation of Helioff cannot simultaneously teach a permanent waving solution and at least one complexing agent effective for dissociating the at least one hydroxide compound in a sufficient quantity to effect lanthionization of keratinous fibers as claimed because the chelating agent in the bisulfite waving formulation as taught by Helioff can not dissociate the hydroxide compound in a sufficient quantity to effect lanthionization of keratinous fibers.

The Examiner respectfully disagrees with the above arguments because the disclosure of the article (Milady's hair structure and chemistry simplified) teaches and discloses the property of the chemical radical disulfide “-S<sub>2</sub>” while Helioff et al. (US' 994) teaches a radical of bisulfite “-HSO<sub>3</sub>”. Further, the article teaches that Sodium bisulfite as a reducing agent can also be used as relaxers (see page 191). Therefore, the composition of Helioff et al. can be used for lanthionizing keratinous fibers as claimed. Therefore, the anticipation rejection is proper and maintained.

With respect to the rejection of claims 6, 22-23, 36 and 42 under 35 U.S.C. 103(a) as being unpatentable over Helioff et al. (US' 994), Applicant argues that the Examiner has not made a prima facie showing of obviousness because Helioff does not teach or disclose all of the claimed element of claim 1 as disclosed above.

The Examiner respectfully disagrees with the above argument for same reasons mentioned above.

With respect to the rejection of claims 12-17, 27 and 30-31 under 35 U.S.C. 103(a) as being unpatentable over Helioff et al. (US' 994) in view of Au et al. (US' 111), Applicant

argues that the Examiner has not made a prima facie showing of obviousness because Helioff does not teach or disclose all of the claimed element of claim 1 as disclosed above.

The Examiner respectfully disagrees with the above argument for the same reasons mentioned above.

With respect to the rejection of claims 24 and 35 under 35 U.S.C. 103(a) as being unpatentable over Helioff et al. (US' 994) in view of Mathews et al. (US' 246), Applicant argues that the Examiner has not made a prima facie showing of obviousness because Helioff does not teach or disclose all of the claimed element of claim 1 as disclosed above.

The Examiner respectfully disagrees with the above argument for the same reasons mentioned above.

With respect to the rejection of claim 28 under 35 U.S.C. 103(a) as being unpatentable over Helioff et al. (US' 994) in view of Pyles et al. (US' 630 A1), Applicant argues that the Examiner has not made a prima facie showing of obviousness because Helioff does not teach or disclose all of the claimed element of claim 1 as disclosed above.

The Examiner respectfully disagrees with the above argument for the same reasons mentioned above.

### *Conclusion*

9       **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eisa Elhilo  
Primary Examiner  
Art Unit 1751

November 25, 2005

Application/Control Number: 09/931,912

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